

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

RICKY LUNA,

Petitioner,

v.

2:23-CV-015-Z-BR

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION

Before the Court are the findings, conclusions, and recommendation (ECF No. 8) (“FCR”) of the United States Magistrate Judge to deny Petitioner’s motion to vacate, set aside, or correct sentence under 28 U.S.C. § 2255 by a person in federal custody (ECF No. 2) (“Motion”). No objections to the FCR have been filed. After making an independent review of the pleadings, files, and records in this case, the Court concludes that the FCR of the Magistrate Judge is correct. It is therefore **ORDERED** that the FCR of the Magistrate Judge is **ADOPTED**, and Petitioner’s Motion is **DENIED**.

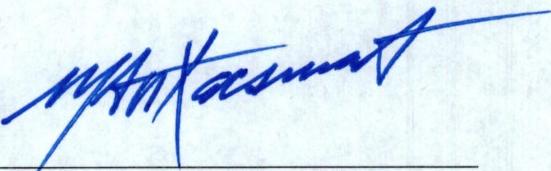
Additionally, the Court **DENIES** a certificate of appealability (“COA”).¹ A district court may deny a COA *sua sponte* and without requiring further briefing or argument. *See Alexander v. Johnson*, 211 F.3d 895, 898 (5th Cir. 2000). Considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), and **ADOPTING** and **INCORPORATING** the Magistrate

¹ Because the Motion to Vacate is governed by the Antiterrorism and Effective Death Penalty Act, codified as amended at 28 U.S.C. § 2253, a COA is a “jurisdictional prerequisite” before an appeal may proceed. *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003) (citing 28 U.S.C. § 2253(c)(1)); *Hallmark v. Johnson*, 118 F.3d 1073, 1076 (5th Cir. 1997) (noting §§ 2254 and 2255 actions require a COA).

Judge's FCR, the Court finds that Petitioner has failed to show that reasonable jurists would find "it debatable whether the petition states a valid claim of the denial of a constitutional right" or "debatable whether [this Court] was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). All other relief not expressly granted herein is **DENIED**.

IT IS SO ORDERED.

October 5, 2023



MATTHEW J. KACSMARYK
UNITED STATES DISTRICT JUDGE